

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 34**

ASCENT MEDIA NETWORK SERVICES

Employer

and

NATIONAL ASSOCIATION OF BROADCAST  
EMPLOYEES AND TECHNICIANS, CWA,  
AFL-CIO

Petitioner

Case No. 34-RC-2049

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding, I find that: the hearing officer's rulings are free from prejudicial error and are affirmed; the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction; the labor organization involved claims to represent certain employees of the Employer; and that a question affecting commerce exists concerning the representation of certain employees of the Employer.

The Petitioner seeks to represent a unit of approximately 45 full-time and regular part-time employees employed by the Employer at its 250 Harbor Drive, Stamford, Connecticut facility, including Tech I's, Tech II's, Tech III's, Traffic Coordinators, and Shift Supervisors, but excluding all clerical employees, maintenance employees, freelance employees, seasonal employees, temporary employees, and guards, professional employees, and supervisors as defined in the Act.

The Employer contends that a unit limited to the employees at the Harbor Drive location is not appropriate for the purposes of collective bargaining, and that a two-

facility unit including its Glenbrook location is the only appropriate unit. In this regard, the Employer maintains that it has rebutted the Board's presumption favoring single facility units. The Employer further contends, contrary to the Petitioner, that maintenance engineers, editors, editorial assistants, graphic artists, a technical director, a lighting director, and freelance employees should be included in the petitioned-for unit. For the reasons noted below, I find, contrary to the Employer's contentions, that the petitioned-for unit is appropriate for the purposes of collective bargaining.

I. Overall Operations

A. Corporate Structure

The Employer is a wholly owned subsidiary of Liberty Media Corporation (herein called Liberty), which is based in Colorado. Liberty has three major divisions: 1) the Creative Services Group that creates video and audio programming content; 2) the Media Services Group that manages the programming; and 3) the instant Employer that distributes the video and audio programming to various customers in the television industry. The Employer maintains facilities at 11 locations throughout the world: the two Stamford, Connecticut locations which are at issue in this proceeding; one in New York; one in New Jersey; one in Minnesota; one in California; one in Florida; two in London, England; and two in Singapore. The Employer's operations in Stamford, Connecticut provides services to about 250 customers in the television industry, including the YES Network, A&E, NFL Channel, NBA, CBS Network, ABC Network, History Channel and Charter Communications. The two Stamford, Connecticut locations are the 250 Harbor Drive facility (herein called Harbor) and the Glenbrook facility (herein called Glenbrook or Earth Station) located about three to four miles apart. The record is silent as to the operations of the Employer's remaining facilities located outside Stamford, other than a general representation that each of its 11 facilities basically perform the same functions, with a slight variation in function at the New Jersey and Florida facilities. With respect to the Stamford facilities, the Employer receives raw programming from its customers, either through live feeds or taped content, which may or may not be subject to manipulation of the content before the programming signal is then broadcast to satellites or cable sources for viewing by the public. There are three types of programming that the Employer handles: 1) shows (including live feeds); 2)

advertisements and commercials; and 3) promotional segments (herein called promos). The services the Employer offers to its customers includes modifying full-length programs to create promos; performing quality review checks of the programming provided; cataloging the programs by encoding them with tracking numbers for later retrieval; downloading the programming in electronic form into its computerized file server; scheduling programming for broadcast from the file server through the generation of play lists; inserting a station identification logo (also referred to as a “bug”) at select spots in the programming; and broadcasting the finished programming content for public viewing.

There are three departments at the Harbor facility that perform some of the above-described functions, including: 1) operations (the department in which the petitioned-for employees work); 2) engineering; and 3) post-production, which includes editing and studio operations. The operations department is staffed by approximately 2 Shift Supervisors<sup>1</sup>, 11 Tech Is<sup>2</sup>, 20 Tech IIs<sup>3</sup>, 5 Tech IIIs<sup>4</sup>, and 7 Traffic Coordinators, all of who the parties agree should be included in the unit. The engineering department is staffed by approximately one Shift Supervisor, seven Maintenance Engineers, and two individuals in a position entitled “Autospc”. The post-production department, which includes the additional employees sought by the Employer, consists of approximately three Shift Supervisors, one Lead Editor, eight Editors, five Edit Assistants, two Graphic Artists, a Lighting Director and a Technical Director.

There are only two departments at Glenbrook. The operations department includes one shift supervisor, two Tech IIs, four Tech IIIs, and three Traffic Coordinators, and the engineering department includes approximately seven Maintenance Engineers. There is no post-production department at Glenbrook.

The Employer has utilized the services of between 70 and 80 “freelance employees” (herein called freelancers) to perform operations and post-production services during the past year. Freelancers are used during the football season as Tech IIs (Master Control Operators) for the broadcast of NFL Sunday Ticket programming,

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<sup>1</sup> The parties have stipulated that these individuals do not exercise statutory supervisory authority, as defined in Section 2(11) of the Act.

<sup>2</sup> Tech Is include individuals employed as Encode Operators, Production Operators and Dubbers.

<sup>3</sup> Tech IIs include individuals employed as Master Control Operators.

<sup>4</sup> Tech IIIs include individuals employed as Vacation Relief, or “VR”.

and at other times throughout the year to perform various studio production and operations work, as described in more detail below. Other than the payment they receive for their services, freelancers receive no other employee benefits such as health and life insurance, which are provided to regular employees. No documentary evidence or testimony was presented to establish either the identities of these individuals or the duration, frequency or regularity of their use by the Employer at either the Harbor or Glenbrook locations.

B. Supervisory Structure

Overall responsibility for the Employer's worldwide operations is vested in President Scott Davis. Reporting to Davis is Senior Vice President of Global Operations Francis Luperella, who has oversight responsibility for the Employer's facilities located in Connecticut, New York, New Jersey, California, Minnesota and Singapore. Luperella has final decision-making authority with respect to employee wage rates, excluding the freelancers whose wage rates are established by the department managers utilizing their services. Reporting directly to Luperella is Vice President of Operations and Engineering Scott Baskin, who is responsible for both Stamford facilities, and the facilities in Minnesota, New York and New Jersey. Baskin and Luperella share authority to make all decisions concerning employee hiring, terminations, promotions and transfers for the five facilities they commonly manage. Both Baskin and Luperella maintain offices at the Harbor facility. Reporting to Baskin at the Harbor facility are Director of Operations Heather Bianco; Vice President of Engineering Jonathan Perkes; and Manager of Post-Production Services Andrew Eichhorn. Reporting to Bianco at the Harbor facility is Manager of Traffic and Scheduling Heather Swan, who directly supervises the Tech Is and Traffic Coordinators. Also reporting to Bianco at the Harbor facility is Manager of Operations Joe Romaniello, who supervises the Tech IIs and IIIs. Reporting to Baskin at Glenbrook are Vice President of Engineering Jerry O'Donnell and Vice President of Operations Joe Garzillo. Reporting to O'Donnell at Glenbrook is Manager of Engineering Richard Rosevalt. It is undisputed that each level of supervision makes recommendations concerning employee hiring, firing, discipline, wage rates, promotions and transfers, and that those recommendations are passed up

the chain of command to either Baskin or Luperella for final authorization. The record is silent as to the extent to which such recommendations are implemented.

C. General Terms and Conditions of Employment

Both the Harbor and Glenbrook facilities operate 24 hours a day, seven days a week. The shifts worked by employees at both facilities are the same. All of the petitioned-for employees are paid hourly, as are all but possibly one of the employees the Employer seeks to include in the unit.<sup>5</sup> The record does not disclose employees' actual wage rates, or any differentiation that may exist between classifications and/or locations with respect to those wage rates. All employees upon hire are provided with the "Ascent Media Employee Handbook" which specifies the benefits employees are eligible to receive, including but not limited to, holidays, vacation, disability, sick leave and overtime pay. This handbook is not unique to the Stamford locations. Rather, it applies to all of the Employer's employees world-wide, except for freelancers. The Employer's human resources operations are centralized in its Northdale, New Jersey office. This office determines all starting wage levels. As noted above, front-line supervision makes recommendations with regard to hiring, firing, promotions, transfers and wage increases. Employees' immediate supervisors further determine their work schedules, their break and lunch periods, approve time off for vacations and holidays, and authorize overtime. Unrebutted evidence indicates that departmental seniority is determinative in granting employees' vacation requests. There is no history of collective bargaining at either location.

D. Overview of the Process From Receipt of Programming to Transmission

The process from receipt of raw programming to the point where the final programming signal is broadcast to viewers involves both the Harbor and Glenbrook facilities, although each have distinct roles in that process. As noted above, a client will provide programming to the Employer for ultimate transmission to the viewing public. However, certain programming arrives in a complete state ready for transmission once a quality review check, encoding and scheduling (also referred to as trafficking) functions have been performed. Other programming is submitted for the purpose of

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<sup>5</sup> Evidence was elicited that a Glenbrook Tech II, who was a salaried employee under the predecessor, remained salaried after the take over.

creating promos, which involves the reduction of full-length programming into a preview format for the purpose of advertising the coming full-length program attraction. The promo and the full-length programming then undergoes a quality review check, encoding, down loading to the file server, scheduling for play out and transmission. Customers also provide the Employer with already created promos, in which no editing services are required. There is no evidence as to the comparative percentage of incoming programming that is subjected to editing. However, the processing of both edited and non-edited programming is performed exclusively at the Harbor facility.

The Harbor facility also receives programming that comes to it as live feeds, particularly with regard to sporting events. With respect to these live feeds, about 40% are “down linked” from orbiting satellites at Glenbrook, which are then sent through fiber optic lines to Harbor. The remaining 60% of the “down links” from satellite are received directly at Harbor. Regardless of its path, once the electronic signal arrives at Harbor, and unlike pre-taped programming, it is sent directly to the Tech IIs, who monitor the quality of the signal, insert commercials and network commentary, and send the programming to Glenbrook (via fiber optic lines or microwave signals) for an “up link” to an orbiting satellite, where the signal is retrieved by a distributor for broadcast to the viewing public.

The Employer also performs some limited studio operations for integration of studio breaks into the live feeds that it airs. In this regard, the Employer maintains two studios at the Harbor location. A large portion of its studio work is a consequence of a contractual relationship with the YES Network, which leases one of the studios. The YES Network utilizes this studio and its equipment on a daily basis for its pre and post-game shows and for “break-ins” of network commentary, such as score updates. For the most part, the YES Network provides its own studio personnel (including a producer, director, makeup artists, camera operators and audio personnel). The Employer provides the services of its Lighting Director and Technical Director. These YES Network studio commentaries are ultimately integrated into the live programming by Tech IIs at Harbor before it is transmitted to the viewing public by the Tech IIs at Glenbrook. Although the record indicates that the Employer had previously performed

certain studio functions for two other clients, no detailed evidence was presented describing this studio work.<sup>6</sup>

The Employer's second studio at the Harbor location is used to create corporate "head shots", which are small productions of a corporate message. On average, the Employer's second studio is used to make about 20 of these corporate "head shots" a month. Approximately half of the "head shots" are recorded to tape, with the remainder being spliced to live broadcast. The live corporate "head shots" are not specifically made for viewing on network television and, thus, do not appear to utilize the services at the Glenbrook facility. Other than the Employer's Lighting and Technical Directors, the remaining studio personnel, such as camera operators, make-up artists and audio personnel, are either employed by the client or are freelancers.

After the programming goes through the above described steps at Harbor, it is then sent via electronic signal to Glenbrook for transmission to the viewing public by an "up link" to satellite. Not all signals arriving at Glenbrook for transmission originate from Harbor. Rather, an unspecified percentage of programming signals come directly from a customer or from another of the Employer's facilities. In this regard, the record reflects that the Employer operates another "transporter" similar to Glenbrook. However, there is no evidence whether Harbor sends signals to that transporter for transmission. The record does indicate that about 10% to 15% of the fiber optic and microwave signals leaving Harbor are sent some place other than Glenbrook, but the record is silent as to their precise destination.

E. Job Classifications

1. Petitioned - for Employees

a. Tech I

As previously noted, Tech Is are only employed at the Harbor facility. Employees working within this classification are also known as Dubbers, Encoders and Production Operators. If the programming received is not live or being edited for the purpose of creating a promo, then such raw programming content is given directly to the Tech Is for copying and conducting of a quality review to ensure that the tape or feed contains proper video and audio content. Thereafter, the Tech Is assign the programming an

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<sup>6</sup> One of these clients, Speed Vision, has not been a client since 2000.

identification number and download the programming to the file server for later retrieval.<sup>7</sup> Tech Is also perform the same function for programming that is first subject to the editing process, i.e., the creation of promos from full-length programming. Tech Is also record live programming for the purpose of being rebroadcast at a later date.

b. Tech II

As noted above, Tech IIs are also called Master Control Operators (herein called MCO). In the broadest sense, the MCOs at both Harbor and Glenbrook monitor the quality of programming as it plays (either that being transmitted or that being received) to ensure that the audio and video content, as well as the electronic signal levels, meet predetermined specifications. Notwithstanding, Harbor and Glenbrook MCOs' work is differentiated in that they perform their functions at different stages of the process. For example, the MCO for the YES Network working out of the Harbor location operates a "switcher" that enables him to access programming content from various sources (live feeds and that stored in the file server) so as to integrate commercials, studio commentary and promos into the live sporting events in the proper sequence. The Glenbrook MCOs do not integrate programming in this fashion. Rather, their role in the process is to monitor the signals being "up linked" from Glenbrook to an orbiting satellite for play out to the viewing audience and to coordinate authorization with satellite operators to send the signals out. If Glenbrook performs the "down link" of the live sporting event program, the MCOs there will have upfront contact with the program by receiving it from satellite and sending it by fiber optic cable to Harbor for the MCO there to perform the integration function described above. In performing their respective functions, MCOs sit at consoles and view in-coming and out-going live feeds. The number of live feeds being viewed by an MCO varies, because certain MCOs are dedicated to a single network, while others may be responsible for as many as six network feeds. At Harbor, certain "Master Control suites" are dedicated to a specific network (including the YES Network, NBA, and A&E), whereas at Glenbrook there are no dedicated suites, with the exception of an isolated room for the transmission of

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<sup>7</sup> The main file server is located at the Glenbrook facility, with the back up file server located at the Harbor facility.



Charter Cable programming, which does not emanate from Harbor. These “Master Control suites” constitute the work area of the MCOs.

c. Tech III

As previously noted, Tech IIIs are also known as “vacation relief” or “VR”. Tech IIIs do not have any distinctive job functions. Rather, as the “vacation relief” name suggests, they fill vacancies created by absenteeism for the other operations department staff, including Tech Is, Tech IIs, and Shift Supervisors. Thus, these employees tend to be well versed in the functions of their respective operations departments and capable of taking over and performing the duties of any vacancy in those positions.

d. Traffic Coordinators

Traffic Coordinators are also referred to as schedulers. Traffic Coordinators at Harbor are responsible for scheduling the programming that is to air by sequencing the shows, commercials and promos in the proper order and generating a play list to be used by the Harbor MCOs in integrating each of these program types. The Traffic Coordinators at Glenbrook, on the other hand, schedule the actual outgoing transmission of the programming signal, as opposed to scheduling the order and structure of the programming elements.

e. Shift Supervisors

Shift Supervisors in the Operations Department oversee the work of that department as detailed above. Because they are considered to have a high skill level, Shift Supervisors troubleshoot operational problems as they arise. As previously noted, the parties agree that the individuals holding the Shift Supervisor position in the Operations Department are not statutory supervisors under Section 2(11).

2. Additional Positions Sought by Employer

a. Maintenance Engineers

Maintenance Engineers are responsible for conducting routine maintenance and emergency repairs on the Employer's equipment. With respect to the routine maintenance function, because the Employer is particularly concerned that signals are transmitted with limited interruption, it has various redundant systems in place to protect them from mechanical failure. Keeping the redundant systems in an operational state is

the responsibility of the maintenance engineers. In performing the emergency repair aspect of their jobs, which usually involve transmission problems, the Maintenance Engineers are called to the problem location where they diagnose and, when possible, repair the defective equipment. When diagnosing the mechanical problems related to a live feed, Maintenance Engineers will “patch” the live programming through to another monitor so as to bypass the equipment being used in the transmission and allow for uninterrupted observation of the problem. When repairs are outside the Maintenance Engineers’ field of knowledge, they will dismantle and send the equipment out for repair by a vendor. Maintenance Engineers require no special training or education to perform their duties. To the extent that the types of equipment vary between the Harbor and Glenbrook locations, the repair and maintenance duties vary accordingly. In this regard, the Maintenance Engineers at Glenbrook most often work on satellite and antenna equipment, whereas those at Harbor most often work on tape machines, monitors and editing equipment. There is at least one Maintenance Engineer on each shift at both Harbor and Glenbrook.

b. Editors

Editors, under the direction of a representative of the customer (usually a producer), manipulate raw programming to create promos. This process involves shortening the footage so as to splice together highlights from the larger production. This work is performed at individual editing stations where the Editor views and listens to content for rearrangement. Other than graphics that may be inserted such as station identifications, editors do not create new programming. As previously noted, no Editors are employed at the Glenbrook location.

c. Editorial Assistants

Editorial Assistants are also referred to as Edit Assistants. As their name implies, their work consists of assisting the Editors. They load tapes into the edit machines and often function as an intermediary between the client and the Editors. Like the Editors, no Editorial Assistants are employed at Glenbrook.

d. Graphic Artists

Graphic Artists are also referred to as Chyron Operators. Although the record suggests that Graphic Artists may also function as Editors, it nevertheless appears that

that there are two individuals identified as holding the Graphic Artists position and who perform isolated automated functions with respect to programming, such as inserting the station identification logo (or “bug”) that is often superimposed at select spots in the programming. As with the Editors and Editorial Assistants, no Graphic Artists are employed at Glenbrook.

e. Lighting Director

The Lighting Director works in the Employer’s studio operations, which unlike its other operations, involves the actual creation of content instead of the manipulation or structuring of already existing content. The Lighting Director’s basic job duty is to ensure that the studio sets are properly lit for filming. The Lighting Director will often work under the direction of a customer-supplied director and/or producer. The content that is created from these studio segments, at least with regard to the YES Network, is later spliced into network programming by the MCO assigned to the YES Network. The Lighting Director also mans the camera on an unspecified number of occasions.

f. Technical Director

Like the Lighting Director, the Technical Director is employed in the Employer’s studio operations in the creation of content. The Technical Director works under the direction of the customer’s director or producer in the creation of this content. Accordingly, the Technical Director follows the commands of the client-provided director/producer with respect to camera angles, what portions of the footage to film and in what configuration. Like the Lighting Director, the Technical Director also mans the camera on an unspecified number of occasions.

g. Freelancers

Freelancers are also referred to as temporary and/or seasonal employees. Freelancers are not referred by an agency. The Employer uses freelancers in a variety of jobs. Freelancers are used during the regular football season in the Employer’s processing and transmittal of a Direct T.V. Sunday football package called NFL Sunday Ticket. The Employer has provided the NFL Sunday Ticket programming services for about nine years. In this regard, the Employer utilizes approximately 12 to 14 freelancers to perform MCO functions in the broadcast of the weekly NFL Sunday Ticket programming in any given year. Each of the NFL Sunday Ticket freelancers has his or

her own booth in which they are assigned a single football game to make sure commercials and promos are inserted in the programming in the proper sequence, as well as monitoring the quality of the video and audio signals. Although the Employer maintains records showing the identities of the freelancers, the number of hours worked, the duration of their services, and the exact number of freelancers used in a given season, no such records were submitted into evidence. The Employer maintains that approximately five to eight freelancers return to perform this work from year to year. However, it was estimated that among those returning freelancers, two to three were regular employees who perform freelance functions on the side for NFL Sunday Ticket. There is no evidence that any NFL Sunday freelancers have been hired by the Employer as permanent employees. Although the record contains conflicting evidence regarding freelancers' pay rates, it appears that their pay rates vary, and that they are either set by the Employer, or the freelancer comes to the job with a pre-set rate.

Aside from the NFL Sunday Ticket programming, freelancers are also used as make-up artists, audio personnel and camera operators in the Employer's studio operations. Although records are kept detailing the use of freelancers in its studio operations, no such documents were submitted into evidence. Nor was any testimony elicited detailing the precise number of studio freelancers used, or the number of hours such persons have worked for any duration of time.

Freelancers are also used in the operations department as Tech Is for dubbing and playback of tapes, and recoding of down links. Again, the record is devoid of any details as to the duration, frequency and identity of freelancers in the above capacities, with the exception of one unidentified individual presently performing an unspecified project two to three days a week that is anticipated to last four to five months. The operations department freelancers are hired by Director of Operations Heather Bianco on a project-by-project basis and are uniformly paid \$25.00 an hour.<sup>8</sup> One of the operations department freelancers, James Harvey, was identified as being made a permanent employee seven to eight months ago.

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<sup>8</sup> Because regular employees' wage rates are not included in the record, there is no measure by which to compare this freelance rate.

It is undisputed that freelancers maintain employment other than that performed for the Employer as a freelancer. If the Employer is dissatisfied with a freelancer's work at the conclusion of the project for which they were retained, it simply declines to recall them to work on another project in the future. Freelancers are also ineligible to receive health insurance and other benefits made available to permanent employees.

F. Employee Contact and Interchange

1. Maintenance Engineers contact with the petitioned-for unit employees

There appears to be no dispute that the Maintenance engineers have regular, albeit undefined, interactions with Tech Is, Tech IIs, Tech IIIs and Shift Supervisors in the fulfillment of their equipment repair and troubleshooting duties. However, the extent and breath of these interactions remains unquantified in the record. Rather, the sum of the evidence is that whenever a technician encounters a mechanical problem with the equipment he or she operates, or with the signal being sent or received, a Maintenance Engineer is contacted. When the Maintenance Engineer arrives at the site of the mechanical malfunction, he is assisted in his diagnostic and troubleshooting functions by the technician and/or Shift Supervisor, who will describe the malfunction and observe whether the maintenance intervention has corrected the problem. If the job involves dismantling and removing equipment for repairs, this function is performed in the presence of the employees working in the area. Technicians do not, however, dismantle or repair equipment, or otherwise perform the work of the Maintenance Engineers. Although there is general testimony that technicians have become Maintenance Engineers, no specific evidence was introduced showing the frequency or time period that this occurred.

2. Post-Production Department employees contact with the petitioned-for unit employees

As noted above, the post-production department consists of the additional employees sought by the Employer, including Editors, Editorial Assistants, Graphic Artists, the Lighting Director and the Technical Director. The two production studios operated by the Employer at its Harbor facility are located on the same floor as the Tech Is, Tech IIs, and Tech IIIs, and the edit suites used by the Editors, Editorial Assistants

and Graphic Artists are located adjacent to the technicians work areas. The record suggests that although the respective workstations are located on the same floor, they are nonetheless separate and not part of a single large workspace. The most that can be said is that these separate work areas are in close physical proximity to one another. There is some evidence that programming tapes are manually delivered between departments. For example, Editors and Edit Assistants deliver programming tapes to Tech Is and the Traffic Coordinators. Other than some general testimony that this type of interaction occurs “a few times a week”, and as much as “a couple of times a day”, the precise extent of the interaction remains undefined in the record. MCOs deny having any contact with Editors. Although confusing, the record further suggests that when Tech Is are recording live broadcasts for replay in the “dub center,” certain unspecified post-production personnel are present in the “post-production suite” on “standby.” It is unclear whether the post-production and operations personnel work together or in different locations while performing work on the same material. Irrespective of this ambiguity, there is no detail as to the frequency and extent of such interactions. There was testimony that an individual previously holding a position as a Tech I was recently made an Editor. No other evidence of permanent interchange exists with respect to the petitioned-for employees and the post-production employees. With respect to the studio personnel’s interaction with petitioned-for employees, general testimony was elicited that on an unspecified number of occasions, and for an unspecified period of time, certain unspecified Tech Is, Tech IIs and Tech IIIs have filled in as camera operators. Also with respect to the YES Network “break in”, the MCOs dedicated to work on YES Network programming have contact with the Technical Director for the purpose of being informed what programming will constitute the “break in.” The frequency and duration of this contact is otherwise undefined.

### 3. Contact and Interchange Between Harbor and Glenbrook Employees

It is undisputed that telephone communications between Harbor and Glenbrook occurs when an MCO encounters distortions in the video or audio quality of a feed being received or transmitted between Harbor and Glenbrook. The MCO witnesses maintain that such telephonic contact is minimal, only occurring about once a month.

whereas the Employer's witnesses assert that it occurs "often." When Tech Is make a taped copy of the "down link" of a live feed, they will call Glenbrook to verify the feed. However, the record is silent as to the frequency, duration and extent of this contact.

In the event of a maintenance problem with the satellite dishes and antenna at Harbor, Maintenance Engineers from Glenbrook (whose acknowledged expertise is with this type of equipment) will be called in to assist the Harbor Maintenance Engineers in performing needed troubleshooting and repair functions. Such maintenance functions, for the most part, are performed on the exterior of the Harbor facility. Although an Employer witness generally described such exchanges as occurring on "a daily basis", employee witnesses dispute seeing Glenbrook employees working at Harbor, or specifically working on Tech I, Tech II or Traffic Coordinator equipment. No other evidence was submitted as to the frequency, degree and duration of such interactions.

The record further reflects that Harbor Tech II Frank Bianco has served as a Traffic Coordinator at Glenbrook on an unspecified number of occasions. In addition, Glenbrook Traffic Coordinator Jennifer Falotico has had tapes dubbed at Harbor and, in doing so, she has picked up and dropped off the tapes to the Tech Is performing the dubbing. However, the record does not reveal the nature and extent of Ms. Falotico's interactions with the Harbor Tech I staff while performing such functions.

Between 2000 to 2002, four Harbor employees holding positions in the petitioned-for unit were permanently transferred to positions at Glenbrook. On unspecified dates, two additional Harbor employees holding positions in the petitioned-for unit transferred to Glenbrook, but one of them transferred back to Harbor after an unspecified period of time. There is no other evidence of employees permanently transferring from Glenbrook to Harbor. With respect to the "Vacation Relief" staff, there is no dispute that Harbor and Glenbrook maintain separate pools for their respective use.

## II. Conclusion

### A. The Appropriateness of a Single-Facility Unit

As previously indicated, the Employer contends that the only appropriate unit is one that includes both its Harbor and Glenbrook facilities. It is well established that when determining the scope of a multi-facility operation, the Board considers a single

facility unit to be presumptively appropriate. Cargill, Inc., 336 NLRB 1114 (2001); J&L Plate, Inc., 310 NLRB 429 (1993). The presumption may be overcome, however, by showing a functional integration so substantial as to negate the separate identity of the single-facility unit. Id. In deciding that issue, the Board considers such factors as centralized control over daily operations and labor relations, including the extent of local autonomy, skills and functions of the employees, general working conditions, bargaining history, employee interchange, and the geographical location of the facilities in relation to one another. Id. The evidence proffered by the Employer in this case is insufficient to overcome the Board's single facility presumption.

With regard to degree of centralized control over daily operations and labor relations and the extent of local autonomy, the record establishes that local management at each facility retain and exercise significant authority over the employees at their facility. Angelus Furniture Mfg. Co., 192 NLRB 992 (1971); Red Lobster, 300 NLRB 908 (1990). More particularly, I note that there are two separate and distinct lines of supervision for the Harbor and Glenbrook facilities. Moreover, although ultimate control with respect to hiring, firing, promotions, transfer and wage increases rest with the very top tiers of management who jointly oversee each facility, the record indicates that front-line and mid-level supervision play a significant role in such decisions. Indeed, the employee handbook specifies that employees need to seek the approval of their supervisor before they will be granted holidays, vacation days and time off for jury duty, and only if they are applying for a long-term medical leave are employees required to go beyond their supervisor by contacting the human resources department. The handbook further indicates that employees' supervisors may authorize overtime. The undisputed evidence that front-line supervisors authorize employees' break times, vacation requests and set employees' work schedules are further indications of significant local autonomy. Finally, I note the absence of any evidence that the ultimate decision makers regularly spend time at Glenbrook, or that they spend any time directly supervising the employees at Harbor.

With regard to the similarity of skills and functions at each location, there is no dispute that although in the broadest sense the work of the MCOs and Maintenance Engineers at the two locations is similar, they have very different functions in the



process of delivering televised programming to the viewing public. More specifically, unlike the MCOs at Harbor, those at Glenbrook do not insert commercials and promos into programming. And although the Maintenance Engineers at both locations troubleshoot and repair equipment, by and large the equipment they repair is different and used for different purposes. Finally, unlike Harbor, there is no Tech I or post-production (i.e., studio and editing) work performed at Glenbrook.

With regard to employees' working conditions, other than the general terms and conditions of employment contained in the employee handbook that applies to all of the Employer's locations worldwide, there is no evidence contained therein regarding employees' actual wage rates, insurance benefits, method for determining the order and selection of employees for overtime opportunities, or the role of seniority in conferring benefits. I also note that the work at Harbor is functionally distinct from the work performed at Glenbrook, which also militates against a finding that the Employer has established sufficient similarity in working conditions to overcome the single facility presumption. Electronic Data Systems Corp. v. NLRB, 938 F.2d 570, 138 LRRM 2205 (5<sup>th</sup> Cir. 1991) (Court upheld Board's finding that single facility was appropriate despite the existence of shared fringed benefits and personnel policies and the organizational integration of plants located 1½ miles apart, where employees performed fundamentally distinct functions and experienced sporadic contact).

With regard to employee interchange, the evidence of four permanent transfers from Harbor to Glenbrook since the year 2000 in a unit with unknown turnover during that time frame is insufficient to establish substantial and regular interchange of employees. The additional evidence of temporary interchange, or occasional contact, also lacks any context and is of little evidentiary value because there is no evidence of the nature, frequency, duration and degree of such interchange and contact. Cargill, Inc., *supra*.

In light of the above, I find that the Employer has not overcome the Board's single-facility presumption, and that the petitioned-for unit is an appropriate unit for the purposes of collective bargaining.

B. Freelancers

The test for determining the eligibility of temporary employees, such as the freelancers, is whether they have a continuing and indefinite tenure. Personal Products Corp., 114 NLRB 959, 960 (1955). On the other hand, if the tenure of the disputed individuals is finite and for a set duration, with no substantial expectancy of continued employment, and the individuals are aware of this fact, they are excluded as temporary employees. Indiana Bottled Gas Co., 128 NLRB 1441, fn.4 (1960). The record conclusively establishes in the instant case that the freelancers are employed for set periods of time and are aware that their work will end at the conclusion of the project for which they are retained. Moreover, the Employer has failed to present evidence establishing that it calls back a significant number of freelancers from year to year, or project to project. LaRonde Bar & Restaurant, Inc., 145 NLRB 270, fn.6 (1963). There is also insufficient record evidence to determine the number of freelancers who are presently employed, their hours worked, or the duration of their respective projects. Accordingly, I shall exclude the freelancers from the petitioned-for unit.

C. Maintenance Engineers and Post-Production Employees

The Board has long recognized that there is no statutory requirement that a unit for collective bargaining be the most appropriate unit. Rather, the Act only requires that the unit sought be “an” appropriate unit. Overnite Transportation Co., 322 NLRB 723 (1996). Therefore, a petitioner is not required to seek the “most” appropriate unit of employees, unless an otherwise appropriate unit does not exist. P. Ballantine & Sons, 141 NLRB 1103, 1107 (1963). However, the Board will not approve “fractured units” that are “too narrow in scope or that have no rational basis.” Seaboard Marine Ltd., 327 NLRB 556 (1999). The essential inquiry is whether a particular grouping of employees share a community of duties and interests sufficiently distinct from other employees so as to warrant a separate unit.

Based upon the above and the record as a whole, I find that the Employer has failed to establish that the Maintenance Engineers and Post-Production employees share a sufficient community of interest with the petitioned-for employees to require their inclusion in the petitioned-for unit. Lundy Packing Co., 314 NLRB 1042 (1994). To the contrary, the evidence establishes that the petitioned-for employees work in a

different department performing different work than the disputed Maintenance Engineers and post-production employees. See Ore-Ida Foods, Inc., 313 NLRB 1016 (1994), enf'd. 66 F.3d 328 (7<sup>th</sup> Cir. 1995). The mere fact that technicians may on occasion assist Maintenance Engineers in the repair of equipment does not undermine their separate work-related functions. Id. Moreover, they each have separate and distinct lines of supervision. Furthermore, the Employer has failed to present any quantifiable evidence regarding the degree of contact or interchange between these employees. See The Washington Palm, Inc., 314 NLRB 1122 (1994). It appears that, for the most part, employees work in discrete work areas, such as editing and master control suites, with little interaction with those outside their work areas. Finally, I note that although employees may share common fringe benefits, the record clearly indicates that seniority privileges are applied on a department basis, as is the development of employees' work schedules.

Accordingly, based upon the above and the record as a whole, I find that the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees employed by the Employer at its 250 Harbor Drive, Stamford, Connecticut facility, including Tech Is, Tech IIs, Tech IIIs, Traffic Coordinators, and Operations Department Shift Supervisors, but excluding all clerical employees, maintenance employees, freelance employees, seasonal employees, temporary employees, post-production employees, and guards, professional employees and supervisors as defined in the Act.

#### DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees in the unit found appropriate herein at the time and place set forth in the notices of election to be issued subsequently.

Eligible to vote: those employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were in the military

services of the United States, ill, on vacation, or temporarily laid off; and employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period, and their replacements.

Ineligible to vote: employees who have quit or been discharged for cause since the designated payroll period; employees engaged in a strike who have been discharged for cause since the strike's commencement and who have not been rehired or reinstated before the election date; and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.

The eligible employees shall vote whether or not they desire to be represented for collective bargaining purposes by the National Association of Broadcast Employees and Technicians, CWA, AFL-CIO.

To ensure that all eligible employees have the opportunity to be informed of the issues in the exercise of their statutory rights to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision and Direction of Election, the Employer shall file with the undersigned, an eligibility list containing the *full* names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359 (1994). The undersigned shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional office, 280 Trumbull Street, 280 Trumbull Street, 21st Floor, Hartford, Connecticut 06103, on or before December 16, 2003. No extension of time to file these lists shall be granted except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by December 23, 2003.

Dated at Hartford, Connecticut this 9th day of December, 2003.

/s/ Jonathan B. Kreisberg

Jonathan B. Kreisberg, Acting Regional Director  
National Labor Relations Board  
Region 34

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